

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DUMBO MOVING & STORAGE, INC.,

Plaintiff,

v.

PIECE OF CAKE MOVING & STORAGE LLC,
SIMPLY MOVING LLC, SIMPLY MOVING &
STORAGE LLC, VOJIN POPOVIC, STEFAN
MARCALI and VOLODYMYR PLOKHYKH,

Defendants.

Case No. 22-CV-05138

STIPULATED PROTECTIVE ORDER

WHEREAS, Plaintiff, DUMBO MOVING & STORAGE, INC. and Defendants PIECE OF CAKE MOVING & STORAGE LLC, SIMPLY MOVING LLC, SIMPLY MOVING & STORAGE LLC, VOJIN POPOVIC, STEFAN MARCALI and VOLODYMYR PLOKHYKH, (hereafter referred to as “the Parties” and each individually as a “Party”) believe that certain information that is or will be encompassed by discovery demands by the Parties involves the production or disclosure of trade secrets, confidential business information, or other proprietary information;

WHEREAS, the Parties seek a protective order limiting disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c):

THEREFORE, it is hereby stipulated among the Parties and ORDERED that:

1. Each Party may designate as confidential for protection under this Order, in whole or in part, any document, information or material that constitutes or includes, in whole or in part, confidential or proprietary information or trade secrets of the Party or persons who are not

Parties to this Action (“Third Parties”) to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such document, information or material (“Protected Material”). Protected Material shall be designated by the Party producing it by affixing a legend or stamp on such document, information or material as follows: “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be placed clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such protection is sought. For deposition and hearing transcripts, the word “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already present on the cover page of the transcript when received from the court reporter) by each attorney receiving a copy of the transcript after that attorney receives notice of the designation of some or all of that transcript as “CONFIDENTIAL.”

2. Any document produced before issuance of this Order with the designation “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the same treatment as if designated “RESTRICTED - ATTORNEYS’ EYES ONLY” under this Order, unless and until such document is redesignated to have a different classification under this Order.
3. With respect to documents, information or material designated “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” (“DESIGNATED MATERIAL”),¹ subject to the provisions herein and unless otherwise stated, this Order governs, without limitation: (a) all documents, electronically stored information, and/or things as defined by the Federal Rules of Civil

¹ The term DESIGNATED MATERIAL is used throughout this Protective Order to refer to the class of materials designated as “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE,” both individually and collectively.

Procedure; (b) all pretrial, hearing or deposition testimony, or documents marked as exhibits or for identification in depositions and hearings; (c) pretrial pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e) stipulations. All copies, reproductions, extracts, digests and complete or partial summaries prepared from any DESIGNATED MATERIALS shall also be considered DESIGNATED MATERIAL and treated as such under this Order.

4. A designation of Protected Material (i.e., “CONFIDENTIAL,” “RESTRICTED - ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE”) should be made at the time of production or at the times provided herein, but may also be made thereafter at any time up to trial. Inadvertent or unintentional production of documents, information or material that has not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or unintentionally produces Protected Material without designating it as DESIGNATED MATERIAL may request destruction of that Protected Material by notifying the recipient(s), as soon as reasonably possible after the producing Party becomes aware of the inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced Protected Materials and any documents, information or material derived from or based thereon.
5. “CONFIDENTIAL” documents, information and material may be disclosed only to the following persons, except upon receipt of the prior written consent of the designating party, upon order of the Court, or as set forth in paragraph 12 herein:
 - (a) outside counsel of record in this Action for the Parties;

- (b) employees of such counsel assigned to and reasonably necessary to assist such counsel in the litigation of this Action;
 - (c) in-house counsel for the Parties who either have responsibility for making decisions dealing directly with the litigation of this Action, or who are assisting outside counsel in the litigation of this Action;
 - (d) up to and including three (3) designated representatives of each of the Parties to the extent reasonably necessary for the litigation of this Action, except that either party may in good faith request the other party's consent to designate one or more additional representatives, the other party shall not unreasonably withhold such consent, and the requesting party may seek leave of Court to designate such additional representative(s) if the requesting party believes the other party has unreasonably withheld such consent;
 - (e) outside consultants or experts (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) retained for the purpose of this litigation, provided that: (1) such consultants or experts are not presently employed by the Parties hereto for purposes other than this Action; (2) before access is given, the consultant or expert has completed the Undertaking attached as Exhibit A hereto;
 - (f) independent litigation support services, including persons working for or as court reporters, graphics or design services, jury or trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this Action; and
 - (g) the Court and its personnel.
6. A Party shall designate documents, information or material as "CONFIDENTIAL" only upon a good faith belief that the documents, information or material contains confidential or proprietary information or trade secrets of the Party or a Third Party to whom the Party reasonably believes it owes an obligation of confidentiality with respect to such documents, information or material.
7. Documents, information or material produced pursuant to any discovery request in this Action, including but not limited to Protected Material designated as DESIGNATED MATERIAL, shall be used by the Parties only in the litigation of this Action and shall not be used for any other purpose. Any person or entity who obtains access to DESIGNATED

MATERIAL or the contents thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions of such DESIGNATED MATERIAL or any portion thereof except as may be reasonably necessary in the litigation of this Action. Any such copies, duplicates, extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS and subject to all of the terms and conditions of this Order.

8. To the extent a producing Party believes that certain Protected Material qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination deserves even further limitation, the producing Party may designate such Protected Material “RESTRICTED -- ATTORNEYS’ EYES ONLY,” or to the extent such Protected Material includes live data (that is, data as it exists residing in a database or databases) and/or computer source code (collectively, “Source Code Material”), the producing Party may designate such Protected Material as “RESTRICTED CONFIDENTIAL SOURCE CODE.”
9. For Protected Material designated RESTRICTED -- ATTORNEYS’ EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to individuals listed in paragraphs 5(a-b) and (e-g); provided, however, before access is given to person under paragraph 5(e), the consultant or expert has completed the Undertaking attached as Exhibit A hereto.
10. For Protected Material designated RESTRICTED CONFIDENTIAL SOURCE CODE, the following additional restrictions apply:
 - (a) Access to such Protected Material shall be limited to individuals listed in paragraphs 5(a-b) and (e-g); provided, however, before access is given to person under paragraph 5(e), the consultant or expert has completed the Undertaking attached as Exhibit A hereto and the same is served upon the producing Party with a current curriculum vitae of the consultant or expert at least ten (10) days before access to the Protected Material is to be given to that consultant or Undertaking to object to and notify the receiving Party in writing that it objects to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer

and use good faith efforts to resolve any such objection. If the Parties are unable to resolve any objection, the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within such other time as the Parties may agree, seeking a protective order with respect to the proposed disclosure. The objecting Party shall have the burden of proving the need for a protective order. No disclosure shall occur until all such objections are resolved by agreement or Court order.

- (b) A Producing Party will produce Source Code Material in a manner such that it is both operational and in computer searchable format. Any Source Code Material produced in discovery shall only be provided to and retained by an expert with secure facilities for retaining and reviewing source code. Any source code provided to an expert to be maintained and examined in the aforementioned secure facility must be provided on physical media (e.g. a hard drive or flash drive as opposed to FTP or other network transfer) on which the source code has been encrypted. The encryption password must be no fewer than twenty (20) characters in length, and the encryption password must be delivered to the expert separate from the physical media and only after the expert has confirmed receipt of the physical media. The physical media shall be provided by hand delivery or by a recognized courier, such as UPS or Federal Express, with signature required by the recipient. The Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device except as necessary to transfer the source code onto the secure computer(s), and except as is necessary to prepare court filings, pleadings, expert reports, or other papers, or for deposition or trial.
- (c) The secure facilities in which the source code is stored and may be accessed must be locked and secured at all times. The source code must be retained by such expert on a secured computer or network of secure computers and each secured computer or network of secured computers must be isolated from the Internet and from any computers, networks, or communication devices located outside the secure facilities. Each secured computer must be password-protected, and each authorized user of each secure computer must have a password chosen independently from other authorized users. The Designating Party shall have the right to inspect the facility to insure it meets the provisions of this paragraph, on such terms and conditions as will provide for the protection of any other confidential information of any kind in such expert's possession and control.
- (d) In the event the expert(s) for the Receiving Party does not have facilities that comply in all respects with the requirements of paragraph 10(c), any source code shall be made available for inspection by the Designating Party, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable times, at an office of the Producing Party's counsel or another mutually agreed upon location. The source code shall be made available for inspection on two secured computers in a secured room without Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device. The Producing Party shall cooperate and permit the

loading onto the review computers containing the source code, any and all software tools that the Receiving Party or its experts reasonably require for the purpose of reviewing, inspecting, testing, or examining the source code. The Producing Party may visually monitor the activities of the Receiving Party's representatives under this subparagraph during any source code review, but only to ensure that there is no unauthorized recording, copying, or transmission of the source code.

- (e) To the extent required for preparing court filings, pleadings, expert reports, or other papers, or in preparation for and conduct of depositions and trial, the Receiving Party shall be permitted to make a reasonable number of printouts, photocopies or electronic copies of limited excerpts (comprising 10 consecutive pages or less) of Source Code Material, all of which shall be designated and clearly labeled "RESTRICTED CONFIDENTIAL SOURCE CODE," and the receiving Party shall maintain a record of all such files that are printed or copied. In preparing court filings, pleadings, expert reports, or other papers, or in preparation for and conduct of depositions and trial, the source code that may be copied to any recordable media or recordable device is strictly limited to those passages or segments of the code that are relevant and directly related to any issue or position that may be presented, but under no circumstances may all or substantially all of a source code be copied to recordable media or recordable devices for such purposes. The recordable media or recordable device on which such code passages or segments are copied must be secured and password-protected, and except when actually in use must be contained in an envelope or container which is marked "CONFIDENTIAL-SOURCE CODE."
- (f) Should printouts or photocopies of Source Code Material be transferred back to electronic media, such media shall be labeled "RESTRICTED CONFIDENTIAL SOURCE CODE" and shall continue to be treated as such.
- (g) The Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form, including name and date of access. The Receiving Party shall maintain all paper copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not create any electronic or other images of the paper copies into any electronic format. The Receiving Party shall only make additional paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers (including a testifying expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for the preparation of its case, and if the Receiving Party makes any such additional copies it must create a log stating exactly what was copied and identifying all persons to whom any such copies were provided. Any paper copies used during a deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left with a court reporter or any other unauthorized individual.
- (h) The producing Party shall provide the receiving Party with information explaining how to access, operate, and review the produced Source Code Material on the

stand-alone computer(s) and such other information as may be reasonably necessary to facilitate the access of the Source Code Material permitted herein.

- (i) Access to Protected Material designated RESTRICTED CONFIDENTIAL - SOURCE CODE by persons designated pursuant to paragraph 5(e) above shall be limited to three (3) outside consultants or experts² (*i.e.*, not existing employees or affiliates of a Party or an affiliate of a Party) per each separately represented Party retained for the purpose of this litigation and approved to access such Protected Materials pursuant to paragraph 10(a).
 - (j) A receiving Party may include excerpts of Source Code Material in a pleading, exhibit, expert report, discovery document, deposition transcript, other Court document (“Source Code Documents”), provided that the Source Code Documents are appropriately marked under this Order, restricted to those who are entitled to have access to them as specified herein, and, if filed with the Court, filed under seal in accordance with the Court’s rules, procedures and orders.
11. Any attorney representing a Party and any person associated with a Party and permitted to receive the other Party’s Protected Material that is designated RESTRICTED CONFIDENTIAL SOURCE CODE who obtains, receives, has access to, or otherwise learns, in whole or in part, the other Party’s RESTRICTED CONFIDENTIAL SOURCE CODE under this Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit on behalf of the receiving Party or its acquirer, successor, predecessor, or other affiliate during the pendency of this Action and for one year after its conclusion, including any appeals. To ensure compliance with the purpose of this provision, each Party shall create an “Ethical Wall” between those persons with access to RESTRICTED CONFIDENTIAL SOURCE CODE and any individuals who, on behalf of the Party or its acquirer, successor, predecessor, or other affiliate, prepare, prosecute, supervise or assist in

² For the purposes of this paragraph, an outside consultant or expert is defined to include the outside consultant’s or expert’s direct reports and other support personnel, such that the disclosure to a consultant or expert who employs others within his or her firm to help in his or her analysis shall count as a disclosure to a single consultant or expert.

the preparation or prosecution of any patent application pertaining to RESTRICTED CONFIDENTIAL SOURCE CODE.

12. Nothing in this Order shall require production of documents, information or other material that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information or other material subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that inadvertently or unintentionally produces documents, information or other material it reasonably believes are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity may obtain the return of such documents, information or other material by promptly notifying the recipient(s) and providing a privilege log for the inadvertently or unintentionally produced documents, information or other material. The recipient(s) shall promptly destroy all copies of such documents, information or other material and shall certify the destruction to the producing Party. The Parties agree to abide by the obligations set forth in Federal Rule of Civil Procedure 26(b)(5)(B), Federal Rule of Evidence 502 and applicable law with respect to the inadvertent production of privileged or work-product protected material. The receiving Party's destruction of a privileged document as provided herein will not act as a waiver of the receiving Party's right to move for the production of the destroyed document on the ground that the documents are not, in fact, subject to a viable privilege or protection.
13. There shall be no disclosure of any DESIGNATED MATERIAL by any person authorized

to have access thereto to any person who is not authorized for such access under this Order.

The Parties are hereby ORDERED to safeguard all such documents, information and material to protect against disclosure to any unauthorized persons or entities.

14. Nothing contained herein shall be construed to prejudice any Party's right to use any DESIGNATED MATERIAL in taking testimony at any deposition or hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s) who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his or her employment with the designating party; (ii) identified in the DESIGNATED MATERIAL as an author, addressee, or copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient of such DESIGNATED MATERIAL, has, in the ordinary course of business, seen such DESIGNATED MATERIAL; (iv) a current or former officer, director or employee of the producing Party or a current or former officer, director or employee of a company affiliated with the producing Party; (v) counsel for a Party, including outside counsel and in-house counsel (subject to the restrictions set forth herein); (vi) an independent contractor, consultant, and/or expert retained for the purpose of this litigation; (vii) court reporters and videographers; (viii) the Court; (ix) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this Action, provided such person has first executed Undertaking attached as Exhibit A; and (x) other persons entitled hereunder to access to DESIGNATED MATERIAL or to whom the producing Party consents in writing or on the record. DESIGNATED MATERIAL shall not be disclosed to any other persons unless prior authorization is obtained from counsel representing the producing Party or from the Court.
15. Parties may, at the deposition or hearing or within thirty (30) days after receipt of a

deposition or hearing transcript, designate the deposition or hearing transcript or any portion thereof as “CONFIDENTIAL,” “RESTRICTED - ATTORNEY’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” pursuant to this Order. Access to the deposition or hearing transcript so designated shall be limited in accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or hearing transcript shall be treated as confidential.

16. Any DESIGNATED MATERIAL that is filed with the Court shall be filed under seal and shall remain under seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the Court that the filing should be sealed and for placing the legend “FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER” above the caption and conspicuously on each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this Order. If a pretrial pleading filed with the Court, or an exhibit thereto, discloses or relies on confidential documents, information or material, such confidential portions shall be redacted to the extent necessary in any pleading or exhibit filed publicly with the Court.
17. The Order applies to pretrial discovery. Nothing in this Order shall be deemed to prevent the Parties from introducing any DESIGNATED MATERIAL into evidence at the trial of this Action, or from using any information contained in DESIGNATED MATERIAL at the trial of this Action, subject to any pretrial order issued by this Court.
18. A receiving Party may request in writing to the designating Party that the designation given to any DESIGNATED MATERIAL be modified or withdrawn. If the designating Party does not agree to redesignation within ten (10) days of receipt of the written request, the receiving Party may apply to the Court for relief. Upon any such application to the Court,

the burden shall be on the designating Party to show why its classification is proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rules of Civil Procedure 37, subject to the Rule's provisions relating to sanctions. In making such application, the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall apply. Pending the Court's determination of the application, the designation of the designating Party shall be maintained.

19. Each outside consultant or expert to whom DESIGNATED MATERIAL is disclosed in accordance with the terms of this Order shall be advised by counsel of the terms of this Order, shall be informed that he or she is subject to the terms and conditions of this Order, and shall sign an acknowledgment that he or she has received a copy of, has read, and has agreed to be bound by this Order. A copy of the acknowledgment form is attached as Appendix A.
20. To the extent that any discovery is taken of Third Parties and in the event that such Third Parties contended the discovery sought involves trade secrets, confidential business information, or other proprietary information, then such Third Parties may agree to be bound by this Order in writing and invoke the benefits hereunder for their discovery.
21. To the extent that discovery or testimony is taken of Third Parties, the Third Parties may designate as "CONFIDENTIAL" or "RESTRICTED -- ATTORNEYS' EYES ONLY" any documents, information or other material, in whole or in part, produced or given by such Third Parties. The Third Parties shall have thirty (30) days after production of such documents, information or other materials to make such a designation. Until that time period lapses or until such a designation has been made, whichever occurs sooner, all documents, information or other material so produced or given shall be treated as

“CONFIDENTIAL” in accordance with this Order.

22. Within thirty (30) days of final termination of this Action, including any appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts, indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any privileged memoranda of the Parties and materials which have been admitted into evidence in this Action), shall be destroyed. The receiving Party shall verify the destruction in writing to the producing Party.
23. The failure to designate documents, information or material in accordance with this Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at a later date seeking to impose such designation or challenging the propriety thereof. The entry of this Order and/or the production of documents, information and material hereunder shall in no way constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.
24. Any Party knowing or believing that any other Party is in violation of or intends to violate this Order and has raised the question of violation or potential violation with the opposing Party and has been unable to resolve the matter by agreement may move the Court for such relief as may be appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be in violation of or intending to violate this Order shall discontinue the performance of and/or shall not undertake the further performance of any action alleged to constitute a violation of this Order.
25. Production of DESIGNATED MATERIAL by each of the Parties in accordance with the terms of this Order shall not be deemed a publication of the documents, information and material (or the contents thereof) produced so as to void or make voidable whatever claim

the Parties may have as to the proprietary and confidential nature of the documents, information or other material or its contents.

26. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind on the rights of each of the Parties to assert any applicable discovery or trial privilege.
27. Each of the Parties shall also retain the right to file a motion with the Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to additional persons or entities if reasonably necessary to prepare and present this Action and (b) to apply for additional protection of DESIGNATED MATERIAL.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: December 8, 2023

Attorneys for Plaintiff, Dumbo Moving & Storage, Inc.

By: /s/ Stephen E. Turman

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SO ORDERED

Dated: December 8, 2023
New York, New York



Hon. Edgardo Ramos
U.S. District Court Judge

APPENDIX A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DUMBO MOVING & STORAGE, INC.,

Plaintiff,

v.

PIECE OF CAKE MOVING & STORAGE LLC,
SIMPLY MOVING LLC, SIMPLY MOVING &
STORAGE LLC, VOJIN POPOVIC, STEFAN
MARCALI and VOLODYMYR PLOKHYKH,

Defendants.

Case No. 22-CV-05138

**UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING
PROTECTIVE ORDER**

I, _____, declare that:

1. My address is _____.
My current employer is _____.
My current occupation is _____.
2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.
3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action any information designated as “CONFIDENTIAL,” “RESTRICTED -- ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” that is disclosed to me.
4. Promptly upon termination of these actions, I will return all documents and things

designated as “CONFIDENTIAL,” “RESTRICTED -- ATTORNEYS’ EYES ONLY,” or “RESTRICTED CONFIDENTIAL SOURCE CODE” that came into my possession, and all documents and things that I have prepared relating thereto, to the outside counsel for the party by whom I am employed.

5. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____